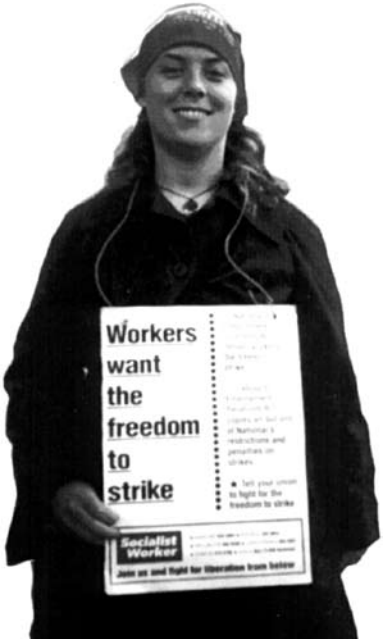
Workers' Freedom to Strike

A submission to the select committee on the Employment Relations Bill from the Socialist Workers Organisation



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Workers' Freedom to Strike

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Cover photo: Georgina Stanley calls for the freedom to strike at the SWO's lobby of the 1999 CTU conference. The conference workshop on industrial relations backed the call by a large majority. But outgoing CTU secretary Angela Foulkes side-lined the idea on the conference floor by refusing to put it to the vote.

Introduction

To the Employment and Accident Insurance Legislation select committee, on the Employment Relations Bill.

1. This submission is from the Socialist Workers Organisation, Box 13-685, Auckland. We may be contacted during the daytime at (09) 634 3984.

2. But it doesn't just represent our views. We've also put our ideas to workers around the country. The workers who we've spoken to have overwhelmingly endorsed the main recommendation of this submission – that the Labour/Alliance government should repeal the Employment Contracts Act and restore workers' freedom to strike.

3. We've put up a resolution at union meetings which says: "Our union must campaign for workers' freedom to strike, banned under both National's Employment Contracts Act and Labour's industrial policy. We ask the union umbrella bodies (CTU and TUF) to organise nationwide actions promoting the freedom to strike." This resolution has been endorsed by:

• job delegates from the Service and Food Workers Union, who voted unanimously at all three regional conferences of the union in September, 1999. At the time of writing this submission, the resolution is being ratified at SFWU AGMs around the country. Early indications are that it's receiving overwhelming backing from the whole union membership.

• job delegates at a meeting of the Canterbury Regional Council of the Nurses Organisation in November, 1999. These workers also voted unanimously.

• health workers belonging to the PSA. In February, a union meeting at Cornwall House Community Mental Health Centre in Auckland voted for the resolution unanimously.

• freezing workers in the New Zealand Meatworkers Union. In March this year, six plant-wide AGMs of the Canterbury Branch of the union voted for the resolution. No-one opposed it. The union's national conference, too, endorsed the resolution with no votes against.

The workshop on industrial relations at the Council of Trade Unions biennial conference in October,1999 also supported our call for workers' freedom to strike by a show of hands.

4. This recommendation is also backed by a petition signed by around 1,000 people. We plan to present this petition at an oral hearing before the committee.

5. While we don't claim to represent any other organisations, we'd like to point out some similarities between our submission and positions taken by other groups.

6. The Council of Trade Unions' submission to this committee in April stated: "the Bill should be amended to enable unions to take industrial action on social and economic issues", as well over the terms of employment agreements. This is one aspect of our call for the government to restore workers' freedom to strike.

7. Our submission is more in line with the position that the Trade Union Federation (TUF) were promoting at least up until 1998. Their 1998 discussion paper, *The New Employment Law: A Contract or Labour Rights Approach?*, declared: "Workers must be allowed to strike in the period before the expiry of their agreement as was the case under the [1987] Labour Relations Act. Workers must also be allowed to strike over so-called 'political' issues."

8. In September last year, Alliance leader Jim Anderton told an audience of 300 trade unionists in Auckland that the Alliance supported the right of workers to engage in political strikes over government policies that affect them. "If you want that view put forward in Parliament", he said, "you should vote for the Alliance". We are disappointed that the Alliance is not honouring Anderton's pledge.

9. There are some similarities between our submission and the industrial relations policy of the Green Party. The Greens have pledged publicly to support the repeal of the Employment Contracts Act but also to push for changes to the Employment Relations Bill that would widen workers' rights to strike. Employment spokesperson Sue Bradford says that "there's no change [in the Bill] in terms of workers being allowed to take industrial action on environmental or human rights issues that might affect them inside or outside the workplace, and that's an issue of concern to the Green Party".

10. Finally, we'd also like to note that the Labour Party itself was founded by unionists who'd dedicated themselves to the idea that workers must rely

on their collective industrial strength – and strike action in particular – to improve their lives. In 1910, future prime ministers Michael Joseph Savage and Peter Fraser, and future ministers in the first Labour government including Tim Armstrong, Bob Semple, Patrick Webb, William Parry and Mark Fagan all signed up to a statement declaring: "Relying on the strength of their combination, and with a full recognition of class solidarity, the workers can win for themselves conditions which the Arbitration Court would never concede." Fraser, Armstrong, Parry and Semple were all jailed for leading illegal strikes. It's a bitter pill for workers to swallow now that the Labour Party today wants to outlaw all strikes except those falling within a few, narrowly-defined situations.

11. We wish to appear before the committee in Auckland to speak to our submission. Grant Morgan may be contacted at (09) 634 3377 during the daytime and Grant Brookes at (09) 623 5780.

General position

12. The Socialist Workers Organisation strongly supports the repeal of the Employment Contracts Act 1991. The Council of Trade Unions has noted that "there is widespread community support for the repeal of the Employment Contracts Act". An *NBR*-Consultus poll last December found that only 24% of people wanted the ECA to stay and just 8% wanted it strengthened in favour of employers. Since then, support for Labour has rocketed. We believe that a poll taken today would show even less support for keeping the Contracts Act.

13. The only groups campaigning to keep the Contracts Act are business groups and their political mouthpieces in National and ACT. They represent the rich few who've benefited from it at the expense of the working class majority.

14. The Socialist Workers Organisation stands unequivocally for the interests of workers and the oppressed. We support measures in the Employment Relations Bill which:

• allow the right of access to workplaces for union representatives (clause 22). Unions are workers' primary means to organise and act collectively in defence of their interests. The right for union representatives to enter workplaces is needed to build the numbers and effectiveness of these organisations.

• provide for paid time off for workers to attend union meetings (clause 26). The full-time officials who head the trade unions have different material interests than rank-and-file union members. Unions only serve the collective interests of workers to the extent that they are controlled by their members. Participation in union meetings can help to promote democracy and rank-and-file control.

• promote collective bargaining (passim). Individual contracts are used to divide workers. Collective bargaining makes it easier for a group of workers covered by the same agreement to recognise and organise around their common interests.

• allow multi-employer and multi-union agreements (clauses 53-59) and legalise strikes in support of them (clause 100(b)(i)). Workers' power lies in our collective ability to withdraw our labour and bring production to a halt. The more production is stopped, the more our potential power to press demands. A multi-employer agreement means that a strike can cause more

widespread stoppage. Multi-union agreements allow groups of workers belonging to different unions to legally strike together.

• outlaw scabbing (clause 111). Police action and the employment of scabs are the two main ways to break a strike. Hiring scabs to do the work of strikers means that production goes on, and workers' power is undermined. The Socialist Workers Organisation strongly supports the banning of scab labour.

• make reinstatement the "primary remedy" for workers in personal grievance cases (clause 138). In practice, the Employment Contracts Act allowed bosses to dismiss workers with impunity. Even when an employer was found guilty of wrongful dismissal, the worker was typically awarded only a few thousand dollars. This allowed employers to ride rough-shod over workers' rights and sack union activists.

15. But we do not support the restrictions on the right to strike contained on clauses 100 and 103 or the penalties for "unlawful strikes" contained in clause 148. Clauses 100 and 103 contain the same restrictions on the right to strike as the Employment Contracts Act, with the single exception of legalising strikes for multi-employer agreements. Workers need the right to strike over "political" issues as well as the terms of our employment agreements. We need the right to take secondary strikes in support of each other. And we need the right to strike before the expiry of a collective agreement.

16. The Socialist Workers Organisation does, however, support the aim spelled out in clause 3(b) – "to promote the observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively". The government's publicity makes out that the Employment Relations Bill complies with these principles. It doesn't. By outlawing strikes over government policy ("political strikes") and secondary strikes in support of other workers, the Employment Relations Bill breaches the principles underlying ILO Convention 87.

17. We propose specific changes to clauses 100 and 103 of the Bill at the end of this submission.

Repeal the Employment Contracts Act

18. Since 1984, the working class majority in New Zealand have suffered 16 years of attacks from the bosses. The last Labour government's backing for this onslaught was happily continued by the National and National/NZ First regimes. Under National, the rich got richer and the poor got poorer. The Employment Contracts Act has fuelled this growing inequality.

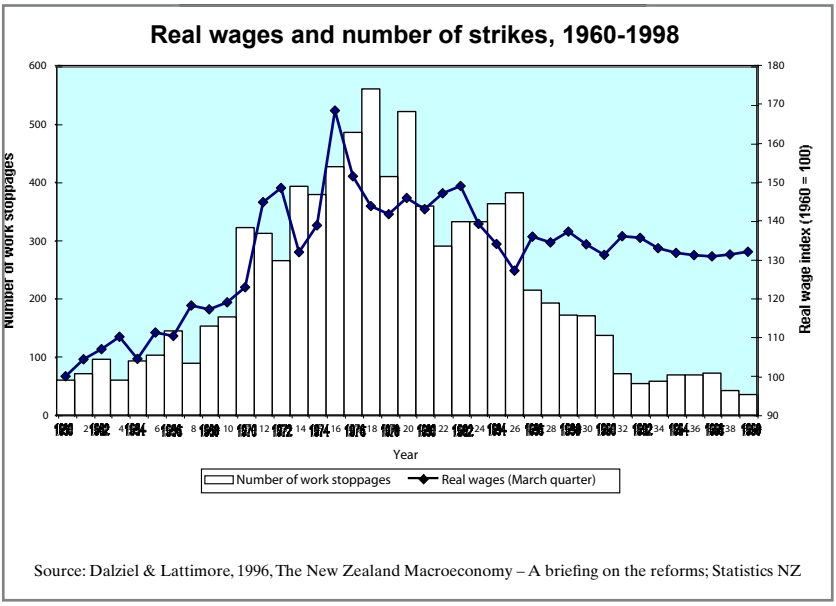
19. The Council of Trade Unions calculates that real wages rose by 2.8% between May 1991, when the Contracts Act was passed, and December 1999. But they add: "Although average hourly rates have increased, this obscures the growing gap between those on high wages and those in low wages. In addition the statistics do not capture the large losses in take home pay due to lost penal rates and allowances. There have been significant cuts in real wages for many workers." While average hourly wages rose by 2.8% (and while the workforce taking home these wages grew slightly), the amount of wealth created in New Zealand (GDP) increased by more than 25% in real terms.

20. A number of studies have shown the growing gap between rich and poor:
• In 1996, CTU economist Peter Harris calculated that $2.8 billion had been transferred from workers' wages to company profits under the Contracts Act. "Operating surpluses" for businesses rose by 30% in this period.
• A 1999 study by Stephens, Waldegrave and Frater found that household income for the top 10% rose by 43% between 1984 and 1998, while income for the bottom 50% of households fell by 14%.

21. Perhaps the most comprehensive look at the growing inequality was the 1998 study by Massey University economist Srikanth Chatterjee and Australian economist Nripesh Podder, *Sharing the National Cake in Post Reform New Zealand: Income Inequality Trends in Terms of Income Sources*. Between 1991/92 and 1995/96, the share of national wealth ending up in the pockets of the bottom 90% fell. The share going to the bottom 60% of us fell by over 5%. The top 5% of income earners, on the other hand, saw their share grow by 12%. The authors described the growth of inequality in New Zealand over the whole 1983/84–1995/96 period as "spectacular". Labour finance spokesperson Michael Cullen commented on the study. Since 1991, he said, the Employment Contracts Act was

interacting with other trends in society to push wages downwards.
22. How has it done this? The Employment Contracts Act helped employers to de-unionise New Zealand workplaces and undermine collective bargaining. Undermining the unions created inequality because that's how we organise to fight industrially. Without collective bargaining, our awareness of our collective strength, our confidence to fight and our ability to take joint action was undermined. Fundamentally then, the Contracts Act pushed wages downwards by suppressing working class struggle. It curbed industrial action by demoralising workers, weakening our organisations and by imposing legal bans on strikes with stiff penalties attached.

23. Historically, strikes have been crucial in winning pay increases. The graph reveals a close link between number of strikes and real wages between 1960 and 1985. The flat level of real wages since 1985 could be accounted for by big rises for a few wage and salary earners while the majority experienced continuing cuts. (This is noted by the CTU and in *Sharing the National Cake*). It could also be partly due to a "floor" below which further pay cuts would affect workers' ability to keep ourselves well enough to continue making maximum profits for the bosses.



Source: Dalziel & Lattimore, 1996, The New Zealand Macroeconomy – A briefing on the reforms; Statistics NZ

24. Hand-in-hand with the downturn in workers' struggles, the position of oppressed groups has worsened.

Women

25. In December 1992, minister of women's affairs Jenny Shipley said that the Contracts Act was "good news for women". She said that it had done more to provide equity for working women "than any other development for a long time". The facts tell otherwise. The pay gap between what men take home each week and what women take home increased from $133 in May 1991 to $155 in 1996. After rising steadily for 28 years, women's hourly rates dropped from 82% of men's in 1990 to 80% by 1997. The Contracts Act also led to decreased choices of work for women. In May 1991, 74% of women were employed in retailing, hospitality, business and financial services or community services. By 1996, the proportion of women in these sectors was 77%. Women were also pushed increasingly into part-time work. 43% were employed part-time in 1996, compared with 41% in May 1991. This was not by choice. "Involuntary" part-time work in New Zealand (that is, part-time workers who said they'd prefer longer hours or full-time work) was the third highest in the OECD.

26. Workers in low-paid, part-time jobs are more vulnerable to bosses' greed. They often have no set hours or job security. They rely even more on collective struggle to make gains. So it's not surprising that women workers were hit harder by the downturn in workers' struggle under the Contracts Act.

Maori and Pacific Islanders

27. The gaps have also widened between Maori and Pacific Islanders on the one hand and Pakeha on the other. In 1999, the average weekly income for Maori was just 75% of Pakeha income. Pacific Islanders on average took home just 69% of Pakeha income each week. Maori and Pacific Island workers, too, are over-represented in low-wage occupations. Their position has been badly affected by the decline in collective struggle under the Contracts Act.

28. The government claims to be repealing the Employment Contracts Act. But as the table shows, the Employment Relations Bill does not repeal the restrictions on the right to strike contained in the Employment Contracts Act. The restrictions in the Employment Relations Bill are exactly the same, apart from the single exception of legalising strikes in support of multi-employer agreements.

Employment Contracts Act	Employment Relations Bill
Section 63 Subject to section 71 of this Act [dealing with health & safety], participation in a strike or lockout shall be unlawful if – (a) it occurs while a collective employment contract relating to employees participating in the strike or affected by the lockout is still in force; or (b) it relates to a personal grievance; or (c) it relates to a dispute...	**Clause 103** (1) Participation in a strike or lockout is unlawful if the strike or lockout– (a) occurs while a collective agreement binding the employees participating in the strike or lockout is in force, unless subsection (2) applies [that is, if a judge allows] ; or (b) [occurs before 40 days of bargaining]; or (c) relates to a personal grievance; or (d) relates to a dispute...
Section 64 (1) Participation in a strike or lockout shall be lawful if – (a) it is not unlawful under section 63 of this Act; and (b) it relates to the negotiation of a collective employment contract for the employees concerned.	**Clause 100** Participation in a strike or lockout is lawful if the strike or lockout – (a) is not unlawful under section 103; and (b) relates to bargaining – (i) for a collective agreement that will bind each of the employees concerned...

29. Labour were elected promising "higher real incomes" and "a fairer distribution of income" (*Key Policies*, 1999). They have pledged to "close the gaps" between Maori and non-Maori. Before the election, prime minister Helen Clark said that Labour wanted to pursue pay equity for women. We believe that if they are serious about delivering on these promises, they should scrap the legal deterrents on strike action contained in the Employment Contracts Act.

30. But more than this, the restrictions on the right to strike contained in the Employment Contracts Act hamstrung the union movement in the fight against the whole raft of National's policy blitzkrieg. Workers were legally barred from striking over issues such as:

- health cuts.
- tertiary fees and student debt.
- market rents for state houses.
- attempts to slash firefighter numbers.
- tax cuts for the rich.

• the introduction of genetically engineered organisms.
• privatisation of most remaining state assets.
• attempts to limit Treaty settlements with the "Fiscal Envelope".
• benefit cuts.
• native logging by Timberlands West Coast.
• cuts to national superannuation.
• military ties with the Suharto regime in Indonesia.

Most of these policies pushed by National were opposed by a majority of the people. The importance of political strikes to stop government attacks on ordinary people and their environment is seen in some examples in the next section, where workers defeated the National government through industrial action, which on the surface appeared illegal.

Restore workers' freedom to strike

31. Clause 98(a) of the Employment Relations Bill defines "strike" as:
"the act of a number of employees who are or have been in the employment of the same employer or of different employers–
(i) in discontinuing that employment, whether wholly or partially, or in reducing the normal performance of it; or
(ii) in refusing or failing after any such discontinuance to resume or return to their employment; or
(iii) in breaking their employment agreement; or
(iv) in refusing or failing to accept engagement for work in which they are usually employed; or
(v) in reducing their normal output or their normal rate of work"
So the ban on unlawful "strikes" effectively includes bans on all industrial action, including working to rule, introducing go-slows and imposing black bans or green bans.

32. We submit that workers should have the right to take industrial action:
• over government policies which affect them, other workers or our environment ("political strikes").
• in support of other workers here or overseas ("secondary strikes" or "sympathy strikes").
• before the expiry of an employment agreement, against job losses, victimisation, breach of an employment agreement by an employer ("disputes") and other issues as they see fit.
There have been a multitude of occasions when workers in New Zealand have needed to take these actions. They include some of the most important victories in the history of the New Zealand trade union movement.

Bulk funding

33. Bulk funding of teacher salaries was floated by the Labour government in 1988 as part of "Tomorrow's Schools". National took up the policy in 1991. Widespread acceptance of bulk funding would have led to increased reliance on fund-raising and growing gaps between "rich schools" and "poor schools". All working class people would have suffered as a result. A 1995 ministry of education report, School Governance and Management, also said that bulk funding would enable teachers' collective contract to be replaced by site contracts. Teachers took industrial action over this

government policy for seven years:

• In 1992, teachers staged a nationwide strike in protest against bulk funding. These were followed by rolling strikes around the country. Teachers at Hamilton's Melville High School and at Cambridge High School forced their boards to reverse their decision to "opt in" after wildcat strikes. They were joined by teachers from across Hamilton and Te Awamutu in a protest rally. PPTA members nationally worked to rule for six months and refused to teach the government's "Achievement Initiative" curriculum.

• In 1993, primary teachers imposed a similar work-to-rule for three months.

• In 1995, 25 teachers at Wesley College in South Auckland struck after their board opted for bulk funding. They struck again in 1996 in an attempt to reverse the board's decision.

• In September 1996, teachers at Onehunga High School in Auckland and Opunake High School in Taranaki struck. By the end of the year, teachers at 11 more schools had taken industrial action.

• In December 1997, 54 teachers at Long Bay College struck.

• In June 1998, PPTA president Martin Cooney said that secondary teachers were taking industrial action at "around 20 schools" in protest against bulk funding. 75% of teachers nationally had voted in favour of industrial action. Education minister Wyatt Creech declared: "This is purely and simply political action".

• In September 1998, teachers at Mountainview High School in Timaru imposed a work-to-rule.

• In October 1998, PPTA members walked off the job at St Peter's College in Palmerston North.

• In November 1998, teachers struck at Pakuranga College. PPTA national president Roger Tobin said "members around the country support the members at St Peter's in their stance".

• In December 1998, industrial action by teachers at Central Hawkes Bay College after the board opted for bulk funding forced the board's resignation. "They are undermining the government's policy", fumed Creech.

34. National vowed to get 80% of schools into the bulk funding scheme by the end of 1998. They dedicated $222 million to bribe schools to accept it, on top of $30 million spent in 1995. Yet these and other political strikes by teachers ensured that by late 1998, only 17% of school boards had opted in. If teachers had not struck against this government policy and National had succeeded in its aim, it would have been extremely difficult for the Labour/Alliance government to scrap the hated scheme. All of these political strikes would be illegal under the Employment Relations Bill.

Secondary teachers

35. In April 1998, 13,000 secondary teachers struck in a nationwide stoppage. They were taking action in support of their union's claim for an employment contract including a 12% pay rise, recognition of the Treaty of Waitangi, increased control by teachers over teacher training – especially over the shoddy institutions which mushroomed after the National government deregulated the sector – and 1,200 extra teachers. Education minister Wyatt Creech declared: "These things are not pay talk matters". "Decisions about government policy and resourcing are for governments to make", he said.

36. Pupil:teacher ratios in New Zealand schools were the second highest in the 21-nation OECD grouping of Western countries. The union had asked the government for the 1,200 extra teachers as early as 1995. They had been negotiating on the issue for three years, and the government had offered absolutely nothing. A private teacher training institute in Christchurch had collapsed, leaving students millions of dollars out of pocket. There were only 200 Maori teachers in secondary schools, far short of the numbers needed. Secondary teachers saw no option but to strike in support of these political demands. Yet this political strike would not be lawful under the Employment Relations Bill.

Anti-nuclear

37. On August 27 1976, the nuclear-capable warship USS Truxton sailed into Wellington harbour. It was the first US warship to be invited to New Zealand by the National government, following a moratorium imposed by the Kirk Labour government. Hundreds of thousands of people were opposed to nuclear ship visits. Wharfies and harbour board workers in Wellington struck for a week in protest against National's policy. All cargo handling ceased. Other Wellington workers also took political strike action, including cleaners at the US embassy. This solid show of defiance was instrumental in building the anti-nuclear movement and in shifting majority opinion against ship visits.

38. Former prime minister David Lange admitted much later that it was the actions of "the people" that made New Zealand nuclear-free. The Labour Party itself was split on the issue. Lange supported continued membership of the ANZUS nuclear alliance. And in 1985, the US ambassador reported a meeting where Lange had asked for six months

to convince his party to allow nuclear ship visits. The political strike by Wellington workers against nuclear ship visits was crucial. Yet this strike would be unlawful under the Employment Relations Bill.

Takaparawha/ Bastion Point

39. On January 5 1977, Maori belonging to the Ngati Whatua iwi occupied a block of land at Bastion Point. The land had been taken from them by the government after the Second World War under the Public Works Act. But in 1976, the National government of Robert Muldoon announced plans to sell the land to private developers who planned to subdivide it for expensive, high-rise apartments. 506 days later, the occupiers were evicted in New Zealand's biggest ever police action, supported by the army. The occupation at Takaparawha attracted huge support around the country from both Maori and Pakeha. Auckland City Councillor (and future Alliance leader) Jim Anderton said he would join the occupiers. "It's the only way left for me to protest", he said.

40. Work on the sub-division was planned to start on January 6, 1977. But the Auckland Trades Council imposed a green ban, calling on unionists not to work on Bastion Point. Workers at Bitumix, who were to work on the development, agreed to respect the green ban and not cross the occupiers' picket line. Electrical workers at the Newmarket power depot resolved not to connect power to any of the planned high-rise homes.

41. In 1987, the Waitangi Tribunal recommended that all the land should be returned to Ngati Whatua. This finding would have been extremely unlikely had the land been developed, which is what the green ban and occupation prevented. Under the Employment Relations Bill, the decision by Auckland workers to "refuse engagement for work in which they are usually employed" in support of a Maori land claim would constitute a political strike. This would be illegal.

East Timor

42. In September 1999, as Indonesian-backed militias stepped up their violence against pro-independence supporters in East Timor, waterside workers in Wellington took industrial action in protest. A shift coming on failed to turn up to work, and instead met in the terminal mess room to discuss the situation in East Timor. Workers around the world were striking against Indonesian interests to press the Indonesian government

to withdraw its troops. The president of the Australian Council of Trade Unions, Jenny George, called for unions to place "bans on all Indonesian government and commercial interests in Australia". The president of the Canadian Labour Congress called for black bans "to impede the flow of goods to and from Indonesia". The Wellington stoppage was called by Waterside Workers Union leader Trevor Hanson and today's CTU president, Rail and Maritime Transport Union president Ross Wilson. "It was a political strike", said Hanson. But after an hour, the employer told the watersiders that their action was illegal under the Employment Contracts Act and ordered them to work.

43. The eventual withdrawal of Indonesian troops was not achieved through pressure from the UN or Western governments. Indonesia had ignored UN resolutions on East Timor for 25 years. Governments of Australia, New Zealand, Britain and the United States had armed and trained the Indonesian regime. In New Zealand, both Labour and National governments had condoned the occupation of East Timor and supported the Indonesian military. The withdrawal from East Timor was forced by the unfailing struggle of the Timorese freedom fighters and the 1998 revolts by students and workers in Indonesia. The strikes which hit Indonesian interests in Western countries in 1999 provided added solidarity. The Employment Relations Bill would keep such action in New Zealand illegal.

Secondary strikes

44. In July 1979, drivers around New Zealand struck for 48 hours to press their demand for a 20% wage rise. Their award negotiations, begun in May, had broken down when employers offered an average of 9%. Early in September, the two sides reached agreement on a basic 11% increase. But 36 hours before the award was due to be signed, prime minister Robert Muldoon threatened to use the Remuneration Act to cut the award settlement by decree. On 19 September, hundreds of thousands of workers struck in support of the drivers' 11% settlement. It was estimated that 80% of trade unionists supported the strike. Despite the short notice and the absence of public transport, 4,000 marched through downtown Auckland in protest. Rallies and pickets were held in most centres. This general strike succeeded in securing a wage rise of 10.5% plus allowances for the drivers – in effect, an 11% increase.

45. New Zealand workers recognised that their collective interests lay in supporting the drivers. If Muldoon had succeeded in using the Remuneration Act against the drivers, other workers would have faced

the same attack. The mass of secondary strikes in 1979 was widely seen to have built the working class solidarity that helped Kinleith workers defeat a second attempt to use the Remuneration Act in 1980. Labour Party shadow minister of labour Kerry Burke said that the Kinleith strike "totally discredited the Remuneration Act". Two years later, it was repealed. Today, Labour proposes with the Employment Relations Bill to completely ban secondary strikes like those which gave the drivers and the New Zealand working class a victory over Muldoon.

Strikes before the expiry of a collective agreement

46. Workers have struck during the term of their contract or award against job losses on many occasions, including:
• In May 1986, railworkers in Hamilton, Taumuranui, Kawerau and Christchurch struck over moves to cut train crews from three to two. The moves were to cost 400 jobs. Wellington railworkers supported the action with a work-to-rule. The general secretary of the National Union of Railwaymen gave the union's backing. Hamilton West MP (today's minister of education and state services and associate minister of finance) Trevor Mallard slammed the Railways Corporation's refusal to negotiate the reduced staffing. As a result of the strike, the Railways Corporation agreed to restore a guard on one train on the Kawerau-Murupara line and re-opened negotiations with the union.

47. Labour had been elected in 1984 on a pledge to "save rail". Leader David Lange told railworkers that Labour was "opposed to the loss of jobs, branch lines, overseas exchange, railway rolling stock and workshops". Then in early 1986, a Railways Corporation board member leaked the company's plans to slash between 3,000 and 5,000 jobs and close workshops. Faced with the blatant breach of a much-repeated election promise, the railworkers had no other option but to strike, during the term of their agreement, against job cuts. The Employment Relations Bill proposes to outlaw any similar strike in future.

48. Workers have struck during the term of their contract or award against victimisation of workmates or trade unionists on many, many occasions:
• In February 1981, a worker was unfairly sacked at the Ravensdown fertiliser works in Dunedin. His co-workers belonging to the Meatworkers Union picketed the plant. When 33 of them were arrested, thousands of meatworkers walked off the job in protest. Two days later, the company offered the dismissed man reinstatement. The strikers won a $200 payment each.

• In December 1985, a railworker in Hamilton was suspended after he had been seen with beer cans in his hand. Management indicated that he faced dismissal. The allegations had been made in a letter from the police. There was no attempt to investigate the claims. The man told a union meeting that he had seen the cans on the ground and had gone to pick them up. Frankton and Te Rapa railyard workers voted unanimously to strike over the victimisation of their workmate, stopping rail freight from Auckland to Wellington. The man was reinstated.
• Perhaps the most famous strike over the victimisation of a trade unionist occurred in Auckland in 1974. Members of the Seamen's Union and Drivers Union were involved in a dispute with a ferry company. They picketed in support of their claim and limited fuel deliveries to the company's ships and hydrofoil. When Drivers Union secretary Bill Andersen was arrested and jailed for ignoring a court order against the union action, thousands of Auckland workers struck. Drivers, seafarers boilermakers labourers, carpenters and many others walked off the job for two days in protest at Andersen's victimisation. 10,000 unionists marched down Queen St to the court where he was due to appear. Andersen was released and the case was dropped.
These strikes, too, would be illegal under the Workplace Relations Bill.

Other issues

49. In 1978, members of the carpenters' and labourers' unions working on the Mangere Bridge staged a series of rolling strikes in support of an improved redundancy deal. Lay-offs were pending as the bridge neared completion. The firm of Wilkins and Davies which was building the bridge was offering just two weeks' severance pay, regardless of length of service. Many of the strikers had been working on the bridge since 1974. The workers stand enjoyed widespread support but all 140 were sacked. Their unions declared the contract "black". When the government cut off unemployment benefits to the workers, other construction workers levied themselves to support them. The New Zealand University Students Association organised meetings on campus in support of the men. Wilkins and Davies lost the contract. The new firm which took over the construction offered a greatly improved redundancy package. This strike during the term of an agreement for an improved redundancy package would be illegal under the Employment Relations Bill.

ILO Convention 87

50. Clause 3(b) of the Employment Relations Bill states that the aim of the Bill is "to promote the observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively". The right to strike is not explicitly stated in ILO Conventions 87 or 98. But a number of ILO documents used in drafting and interpreting these conventions explain how their "principles" apply to the right to strike.

51. The ILO is not a radical body. Nor is it wholeheartedly committed to the interests of workers and the vast majority of the world's population – the poor. It was set up in 1920 specifically out of a fear that "without an improvement in their conditions, the workers, whose numbers were ever increasing as a result of industrialisation, would create social unrest, even revolution". Trade unionists make up only a quarter of the people on its official bodies. The other three quarters are employers and government officials. Former prime minister Jim Bolger was an ILO president. Workers should not limit themselves to laws laid down by a body like this. But the fact that the bans on strike action contained in the Employment Relations Bill are too restrictive for the ILO shows how harsh they really are.

52. Internationally, workers have fought for the right to strike with such determination and success that the International Labour Organisation (ILO) has been forced to confirm these rights, as the following paragraphs show.

53. In 1994, the ILO produced a report called *General Survey on Freedom of Association and Collective Bargaining: The right to strike*. The report explained that "Although the right to strike is not... specifically recognized in Conventions Nos. 87 and 98, it seemed to have been taken for granted in the report prepared for the first discussion of Convention No. 87" (paragraph 142).

54. Convention 87 states:
- "Workers' and employers' organizations shall have the right ... to organize their ... activities and to formulate their programmes" (Article 3(1)).
- "The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof" (Article 3(2)).

55. But what does this mean? ILO documents are written in legal language. There are a multitude of official bodies in charge of writing and interpreting them. One of the top bodies in charge of interpreting Conventions 87 and 98 is the ILO Committee of Experts. In 1959, the Committee ruled that "the ordinary meaning of the word 'programmes' includes strike action" (paragraph 148). The Committee has stuck to this interpretation ever since. "In the view of the Committee, the right to strike is an intrinsic corollary of the right of association protected by Convention No. 87" (paragraph 179).

56. The General Survey goes on to spell out the ILO's position in more detail:

- "In the view of the Committee, organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general" (paragraph 165).
- "the Committee considers that a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is itself lawful" (paragraph 168).

According to the ILO then, workers should have the right to political strikes and secondary, or "sympathy" strikes under Convention 87. The Employment Relations Bill outlaws both these kinds of strikes.

57. The 1994 *General Survey* also states that banning strikes during the term of collective agreements is a "major restriction on a basic right of workers' organizations" (paragraph 167). Clause 103(1)(a) of the Employment Relations Bill does just that. It says: "Participation in a strike or lockout is unlawful if the strike or lockout occurs while a collective agreement binding the employees or affected by a lockout is in force".

58. The government can hardly claim they didn't know that their Employment Relations Bill breaches the principles underlying ILO Convention 87. In 1994, the Council of Trade Unions made a complaint to the ILO about National's Employment Contracts Act. The ILO produced a highly-publicised report on the Contracts Act and the New Zealand government made two replies. Paragraph 741(m) of the ILO report states:

- "trade unions organisations ought to have the possibility of recourse to protest strikes in particular where aimed at criticizing a government's

economic and social policy."

• "the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement."

Clause 100(b) of the Employment Relations Bill provides the only effective grounds for lawful strikes. "Participation in a strike or lockout is lawful if the strike or lockout relates to bargaining for a collective agreement that will bind each of the employees concerned." In our view, it is outrageous that the ILO's damning criticisms of the Employment Contracts Act restriction of the right to strike also apply to the Employment Relations Bill.

Recommendations

59. The ILO have observed that: "it is often impossible to distinguish in practice between the political and occupational aspects of a strike" (*General Survey*, paragraph 165).

60. The Trade Union Federation have argued: "If workers may strike over the contents of their employment agreement then they must also be able to strike over the legislation which affects both the form and content of specific agreements... The same principle applies to health and safety. There is no point being able to refuse to work in an unsafe environment if that does not include the larger environment... and the presence in it, for example, of nuclear waste or nuclear weapons" (*The New Employment Law*).

61. In our view, there is no hard and fast distinction between "collective bargaining issues" and "political issues". Both impact on workers. So the right to strike should apply to both.

62. Likewise, many issues impact on large numbers of workers, regardless of which employment agreement they are working under at the time. As workers, we should have the right to strike to advance our collective interests across worksites and industries. Secondary strikes in support of workers employed under a different collective agreement should be legal.

63. Employers have the right to cut jobs during the term of an agreement. Workers ought to have the right to take industrial action over these cuts when they occur. Strikes, therefore, should be legal before the expiry of an agreement.

64. Finally, the ILO have noted: "Strike action is often the symptom of broader and more diffuse issues, so that the fact that a strike is prohibited by a country's legislation or by a judicial order will not prevent it from occurring if economic and social pressures are sufficiently strong" (paragraph 138). We share this view and believe history has clearly shown it to be true. However, we regard any restriction on the right to strike to be arbitrary and unjustified. When a majority of workers vote for industrial action, we ought to be able to take that action free from the threat of legal penalties. We regard this as a fundamental democratic right for workers.

The Socialist Workers Organisation therefore calls for the deletion of clause 103 ("Unlawful strikes") and related penalty clauses and proposes the following wording for clause 100 ("Lawful strikes"):

"Participation in any strike shall be lawful."